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the Colonial Coal & Coke Company. Judgment for defendant, and plaintiff brings error. Affirmed.

Bond & Bruce, of Wise, for plaintiff in error.

Bullitt & Chalkley, of Big Stone Gap, for defendant in error.

PHIPPS *v.* WISE HOTEL CO. et al.

Sept. 11, 1913.

[79 S. E. 349.]

1. Equity (§ 452*)—Bill of Review—Defenses—Negligence.—A suit to enforce a mechanics' lien on land subject to certain vendors' liens, the holders of which were made parties, was referred to a master commissioner to ascertain and report the liens, their amounts and priorities, and the value of the lots, exclusive of the building, and of the building. The commissioner reported the value of the lots at \$4,500, and of the building at \$13,000, and that the vendors' liens were first liens on the lots, and the mechanic's lien a first lien against the building. The report without exception on the part of D., one of the holders of the vendors' liens, so far as the mechanics' lien was concerned, was confirmed, and a decree entered, directing a sale, and ordering that the proceeds should be distributed, 26/37 to the holder of the mechanic's lien, and to the holders of the vendors' liens the residue. The holder of the mechanic's lien by bidding caused the property to sell for enough to protect his lien. On notice to D. the sale was confirmed, and the proceeds thereof distributed as decreed. The purchaser thereafter made improvements on the property, and paid insurance thereon. D. filed a bill of review on the ground that the vendors' liens should have been given priority over the mechanic's lien. Held, that D., having neglected to make defense to the commissioner's report upon the question of law raised by the bill of review, was estopped and not entitled to the relief sought, since he had put it beyond the power of the court to correct its decree establishing the liens, without loss to some one of the interested parties, and the loss should be borne by the one whose negligence or conduct caused it.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 1101-1109; Dec. Dig. § 452.* 9 Va.-W. Va. Enc. Dig. 94; 14 Va.-W. Va. Enc. Dig. 633; 15 Va.-W. Va. Enc. Dig. 596.]

2. Equity (§ 442*)—Bill of Review—Grounds—Establishment.—A bill of review will not lie, unless the facts upon which it is based are recited in the decree sought to be reviewed, as admitted in the pleadings.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 1065-1070;

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

Dec. Dig. § 442.* 2 Va.-W. Va. Enc. Dig. 391; 14 Va.-W. Va. Enc. Dig. 154; 15 Va.-W. Va. Enc. Dig. 123.]

3. Equity (§ 446*)—Bill of Review—Grounds.—Where, in a suit to enforce a mechanic's lien, the commissioner's report as to the mechanic's and vendors' liens and their priorities was not excepted to, relief against alleged errors therein could not be given on a bill of review, as the priority of such liens might have been affected by extraneous evidence.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 1079-1090; Dec. Dig. 446.* 2 Va.-W. Va. Enc. Dig. 391; 14 Va.-W. Va. Enc. Dig. 154; 15 Va.-W. Va. Enc. Dig. 123.]

4. Equity (§ 442*)—Bill of Review—Grounds.—That, in a suit to enforce a mechanic's lien, the lien and the deeds in which the vendors' liens were retained were filed as evidence with the bill did not authorize the correction of the commissioner's report as to the priority of such liens on a bill of review.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 1065-1070; Dec. Dig. § 442.* 2 Va.-W. Va. Enc. Dig. 391; 14 Va.-W. Va. Enc. Dig. 154; 15 Va.-W. Va. Enc. Dig. 123.]

Appeal from Circuit Court, Wise County.

Suit by D. J. Phipps against the Wise Hotel Company and others, in which H. H. Dotson filed a bill of review. From a decree granting the relief sought by the bill of review, the original complainant appeals. Reversed, and decree entered, dismissing the case.

Bond & Bruce, of Wise, for appellant.

E. L. Barr and *E. M. Fulton*, of Wise, for appellees.

LEFTWICH et al. v. EARLY.

Sept. 11, 1913.

[79 So. 384.]

1. Evidence (§ 431*)—Delivery of Deed—Parol Evidence.—While parol evidence is inadmissible to prove that a deed perfect on its face was delivered to the grantee on condition, this rule does not control where the question is whether there was such a complete and perfect delivery as to vest in the grantee a perfect and indefeasible title.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1975-1980; Dec. Dig. § 431.* 10 Va.-W. Va. Enc. Dig. 707.]

2. Deeds (§ 66*)—Delivery—Questions for Jury.—Whether there has been such a complete and perfect delivery of a deed to the grantee

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.